



SEARCHES IN SCHOOLS

4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

1. Expectation of privacy!!

2. S & S must be reasonable

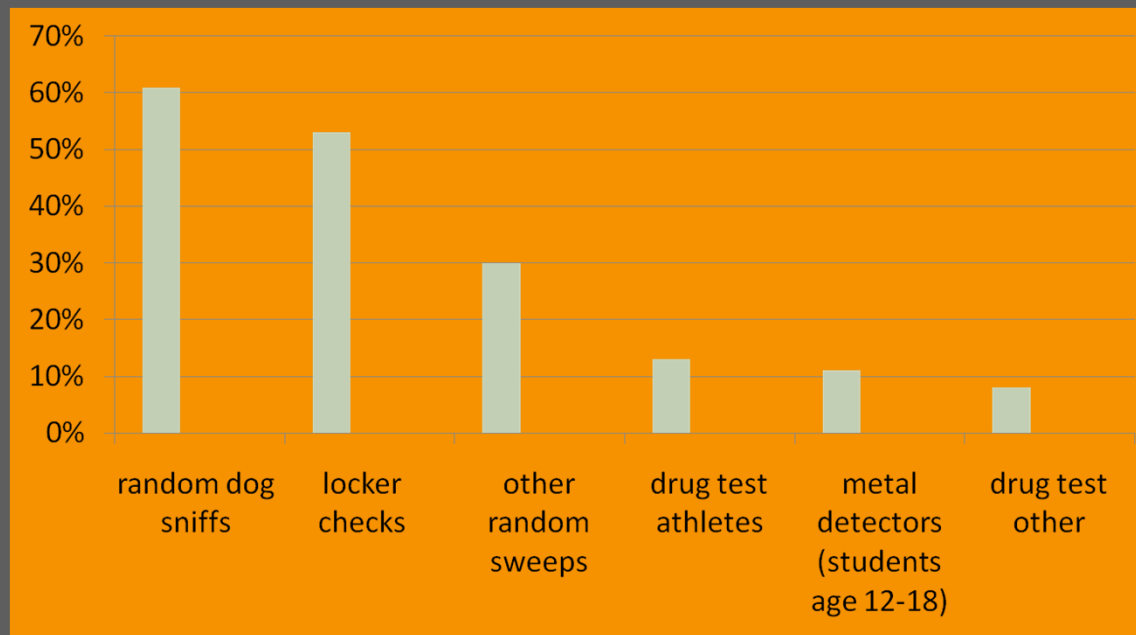
3. Warrants are necessary to justify S & S

5. Warrants have to be specific

4. Prob. cause is necessary for warrant to issue

THE CONSTITUTION

Percent of HS Students Subjected to School Searches



School Official Searches: The Basics

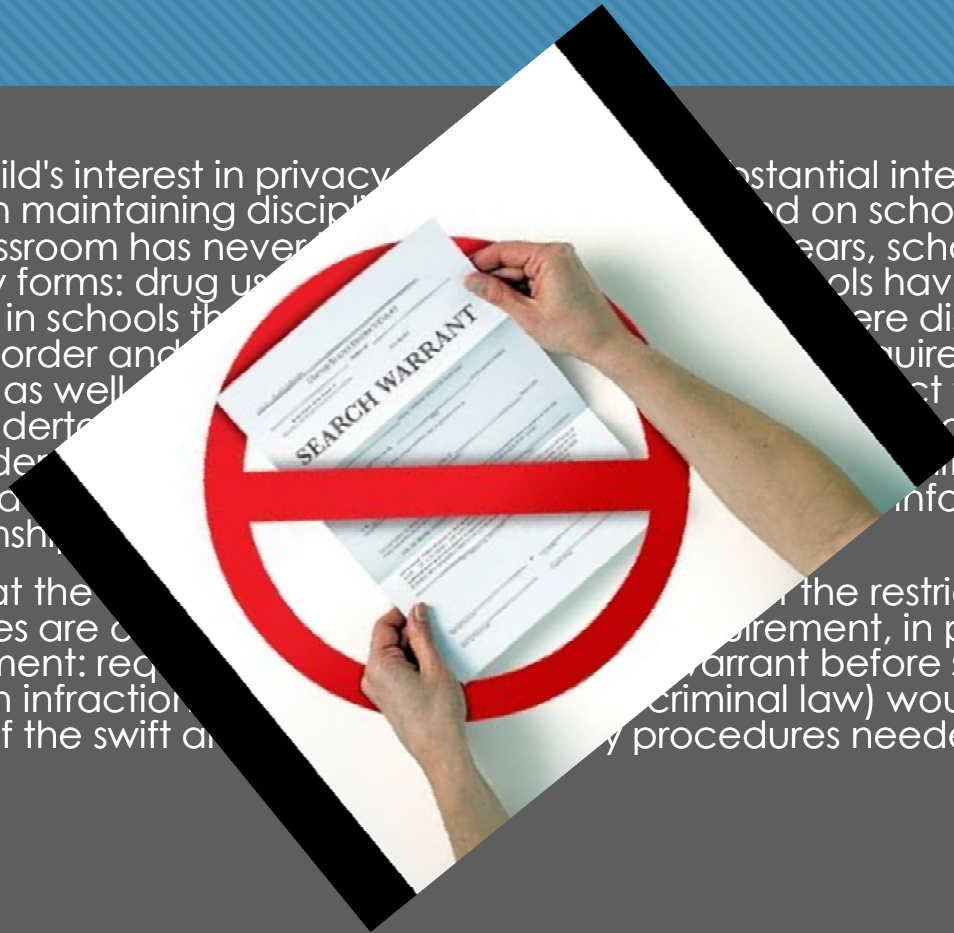
New Jersey v. TLO, 469 U.S. 325 (1985)

- 4th Amendment applies in schools
 - School officials = government actors
- Students maintain right to privacy while on school grounds
- No need for a warrant or probable cause
- “the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search”



The Justification

- “Against the child's interest in privacy and the substantial interest of teachers and administrators in maintaining discipline on school grounds. Maintaining order in the classroom has never been easier. In recent years, school disorder has often taken particularly ugly forms: drug use, alcohol consumption, and other problems. Even in schools that have had serious disciplinary problems, the preservation of order and discipline requires close supervision of schoolchildren, as well as the presence of teachers and administrators. It is not permissible if undertaken for the purpose of maintaining security and order in the classroom, or for the purpose of enforcing school procedures, and it is not permissible if it interferes with the informal teacher-student relationship.”
- “It is evident that the restrictions to which searches by public authorities are subjected, in particular, is unsuited to the school environment: requiring a warrant before searching a child suspected of an infraction (under criminal law) would unduly interfere with the maintenance of the swift and effective disciplinary procedures needed in the schools.”



“Reasonableness”

- Justified at its inception;
 - reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.
- Reasonably related in scope to the circumstances that justified the initial interference.
 - Reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.



Justified at Inception

What is reasonable?

- Reliable tips (including anonymous tips with specifics)
- Direct observations
- Prior history (needs to be related; varies by juris.)
- Common sense conclusions about individual behavior, when more than a hunch

What is not reasonable?

- Student's status as rule breaker
- Hunches or rumors
- Association with wrongdoers
- Furtive gestures or non-cooperation

Reasonable in Scope

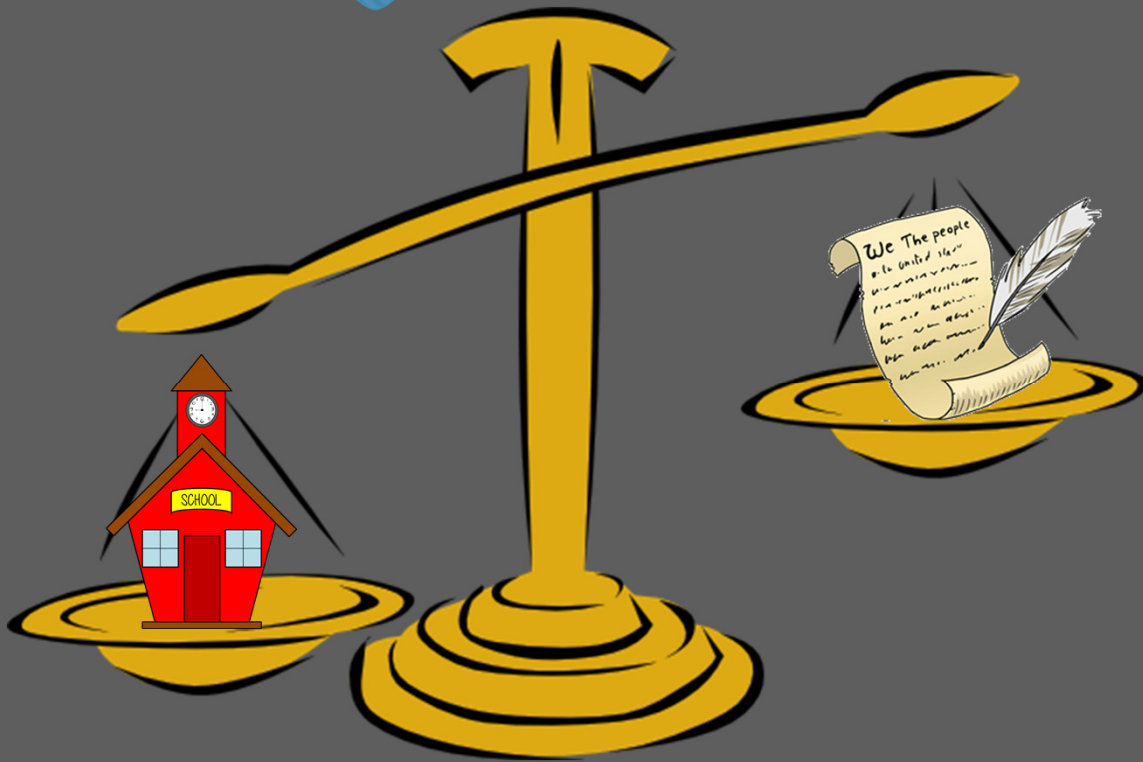
What is reasonable in scope?

- Pat frisks
- Pockets
- Strip Searches
- Purses
- Lockers
- Handcuffs

What is not reasonable in scope?

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Balancing the Interests



- Courts weigh *intrusiveness of search* against the *school's interest*
- Nature of the offense implicates the importance of the school's interest
 - Drugs and weapons – legitimate interest
 - Stolen money – low interest
 - Threats???

Reasonable in Scope: Application

Safford Unified School District #1 v. Redding, 129 S. Ct. 2633 (2009)

○ Facts?

- Chain of students found with prescription strength pain pills, with one identifying Redding as the source
- Search of backpack and outer clothing came up empty
- Stripped down to underwear, told to pull her bra out and shake it and pull out the elastic on her underpants

○ Holding?

- Amounted to a strip search
- Search of underwear violated 4th Amendment as unreasonable in scope
- Officials entitled to qualified immunity

Unanswered Questions

Lockers and Desks

Applicability of Exclusionary Rule

Level of suspicion required when the search is performed in conjunction with or at the behest of law enforcement



Locker Searches: Mississippi

Sec. 23

- "The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designating the place to be searched and the person or thing to be seized."

S.C. v. State, 583 So.2d 188 (Miss. 1991)

- Under Miss. Constitution, students have legitimate expectation of privacy in their lockers
 - **BUT** "Suffice it to say that the student's expectation of privacy in a school locker is considerably less than he would have in the privacy of his home or even, perhaps, his automobile. Because that interest is less than in these other circumstances, and because it necessarily clashes with the broad discretionary authority and responsibility of the school officials, a lesser showing is required before school officials may have authority to search a student's locker."
- Tip that defendant offered to sell guns to another student provided reasonable grounds upon which to search his locker
 - "Suffice it to say a sensitive appreciation of the circumstances suggested an exigency such that we except Section 23's warrant proviso."
- Does not reach question of consent

Automobile Searches: Mississippi

When parked on campus, reasonable suspicion analysis controls:

Covington Cty. v. G.W., 767 So.2d 187 (Miss. 2000)

- Tip that student had been drinking by his truck; (obtained student consent to search)
- “we can hardly say such a higher expectation of privacy should be had in a car on school property as opposed to a school locker”
- “there was reasonable suspicion to believe that G.W. had been in the parking lot drinking before class. A student reported the incident, and several other students confirmed the report. Empty beer cans were found in the back of G.W.'s truck. A reasonable school official under these circumstances would and should have regarded this information sufficient to take action. The search was justified and was reasonably related to the student's assertion that G.W. had been in the parking lot drinking.”



Brief Detention / Questioning

Many courts have held that school officials (and SROs) have the authority to briefly detain and question a student on less than reasonable suspicion

Can stop to ask for program card, etc.

Cannot be arbitrary, capricious or harassing



When Police Search in Schools

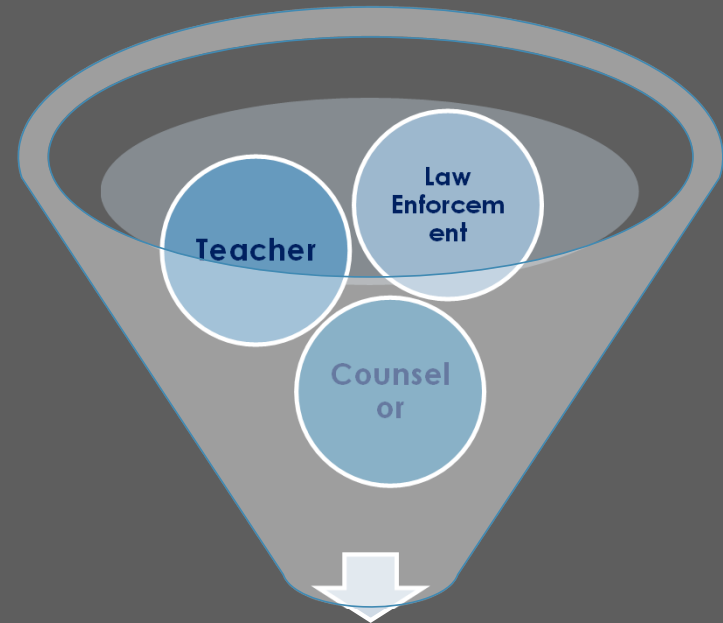


- Exclusively by Police
 - Not requested or authorized by school officials
 - Probably requires probable cause (search of ind) / warrant (search of bags, etc)
- Police in cooperation with school officials
 - Standard depends on the level of police involvement
 - Factors include:
 - Who initiated or requested the search?
 - Did school officials authorize the search?
 - Who conducted the search?

What About School Resource Officers?

SROs are “all career law enforcement officers with arrest authority, who have specialized training and are assigned to work in collaboration with school organizations.”

○ Definition from Nat'l Center for Educ. Statistics

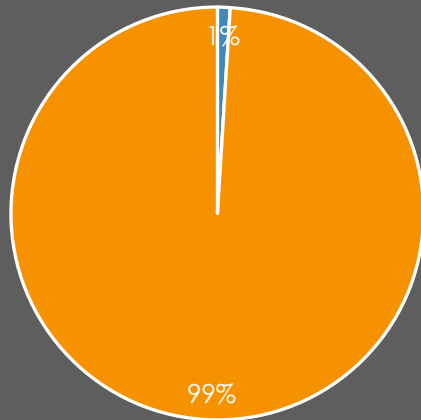


“Triad” model

What About School Resource Officers?

In 1975, only 1% of schools reported having police officers onsite, and by the late 1970s, there were fewer than one hundred officers in public schools.

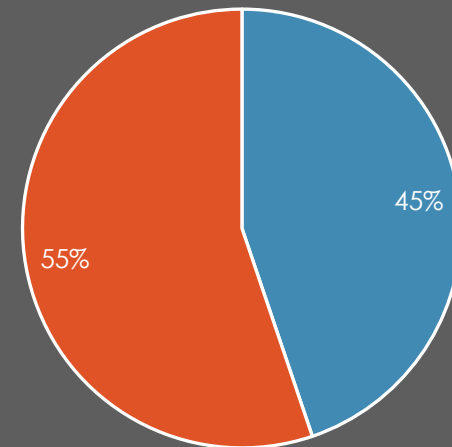
1975



■ % of public schools with SROs ■ % of public schools w/o SROs

While in 2005-06, 32.4% of sampled public schools employed at least one SRO, in 2017-18, this percentage jumped to 44.8%.

2017



■ % of public schools with SROs ■ % of public schools w/o SROs

What About School Resource Officers?

- SROs **hyper-criminalize trivial student misbehavior** that teachers and school administrators would not otherwise turn to law enforcement for.
- Studies have shown that schools with **SROs are more likely to arrest students for low-level offenses**, or otherwise report more non-serious offenses to law enforcement, than schools without SROs.
- Increased rates of arrest **disproportionately affect students of color and students with disabilities**.
- There is always the possibility that a child is disciplined both by the school and by law enforcement, and studies show that **students who are suspended or expelled** are then up to **three times more likely to become involved with the juvenile legal system**.
- Students who face arrests are **less likely to graduate, succeed academically, and have stable employment**. All these factors then increase one's likelihood of coming into contact with either the juvenile or criminal legal system.



What About School Resource Officers?

- Nationally, more often than not, SROs are considered school officials for purposes of search and seizure
- Factors courts consider include:
 - Nature of employment
 - Are they employed by the school or members of the police force?
 - Look to Memos of Understanding and/or other school policies
 - Nature of job responsibilities within the school (TRIAD Model)
 - Is the SRO furthering educationally-related goals?



Brief Detention / Questioning

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 - Can stop to ask for program card, etc.
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What About School Resource Officers?

BREAKOUT: Establishing the need for warrant / probable cause

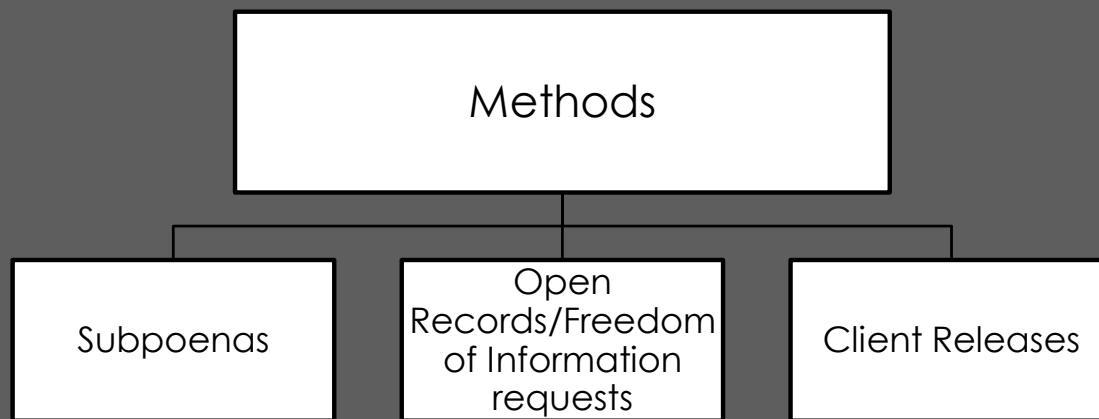
- School officials receive a tip that student P.W. is alleged to have brought a BB gun to school
- Assistant principal and SRO go to PW's class and escort him to the SRO office
- While in the office, the assistant principal takes PW's bag and searches it while the SRO looks on

- 1) Is the SRO law enforcement?
 - What documents should you seek, and through what mechanisms?
 - What cross-examination facts should you elicit?
- 2) Even if the SRO is law enforcement, is this a school search, or law enforcement search?
 - What is the basis for your legal argument?
 - What cross-examination facts should you elicit?
- 3) Has PW consented to the search of his bag?
 - What cross-examination facts should you elicit?



School-Based Discovery

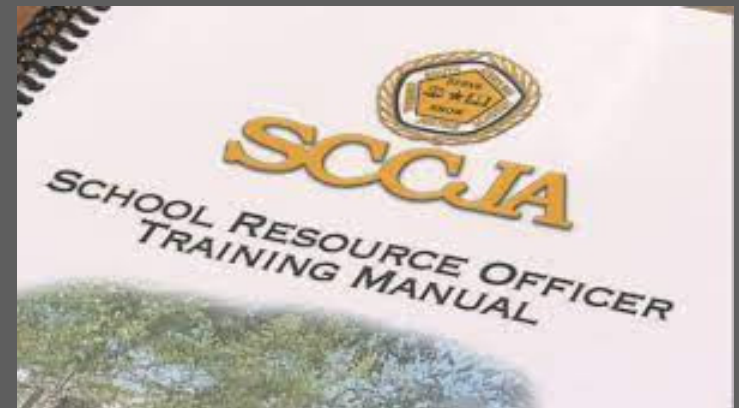
School-Based Discovery



School-Based Discovery

Documents relating to relationship between SRO and local police department

- Policies
- Employment documents
- Memorandum of understanding
- Training manuals
- Student handbooks



School-Based Discovery

Documents relating to the incident

- Police reports
- School reports
- Witness statements
- Surveillance videos
- Records from any discipline proceedings
 - Both formal and informal



School-Based Discovery

Documents relating to the client

- Transcripts, progress reports, standardized testing, attendance records
- Special education records
 - Referrals for special education, evaluations, IEPs; manifestation determination review minutes
- Discipline records
 - School level and formal
- Correspondence between the school and the parent / guardian



Practice Tips

Practice Tips: Filing the Motion

ALWAYS consider filing a motion to suppress

May lead to dismissal of the case

May weaken prosecution's case, leading to a reduction in charges / better chance of prevailing in court

Offers significant opportunities for discovery

- Preview of prosecutor's case
- Get a trial run at cross-examination of prosecutor's witness(es)
- Lock witness in to version of events (impeachable)

Strengthens attorney-client relationship and builds trust

Preserves issues for appeal

Challenges the status quo

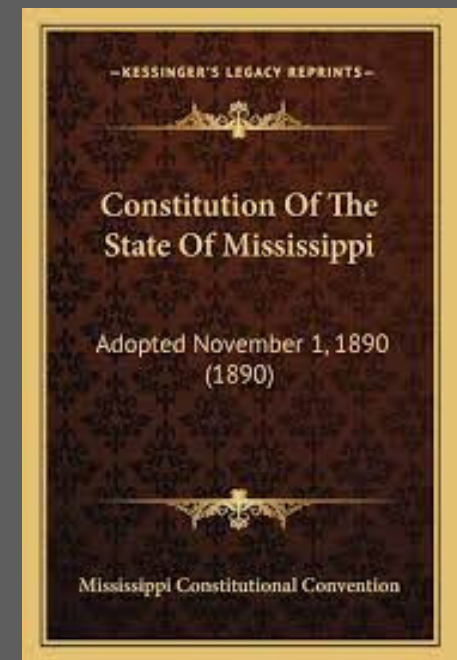
Practice Tips: Filing the Motion

File in writing (5 days prior to hearing)

Allege violations of both Federal and State Constitutions and Statutes

- States often provide greater protections than the U.S. Constitution

Look to the law in other states for support



Miscellaneous School Issues



CELL PHONE SEARCHES: RILEY

Means by Which Schools Obtain Phones



Means by Which Schools Obtain Phones

- Use of phone during school hours=rule infraction under Student Code of Conduct= seizure
- Student arrested while on-campus=SITA
- Student investigated by school administrators and/or SROs, who seize phone arguing that a search is necessary under T.L.O.

Riley v. California,

134 S.Ct. 2473 (2014)

- Facts

- Case #1 Stop/search of car after impoundment, arrest for gun possession, search #1-incriminating contacts (“CK”), search #2 incriminating photo/video
- Case #2 SITA search of cell phone-incoming calls/photo-search of house - drugs

- Holding:

- Police must obtain warrant to search cell phones/smartphones

- Reasoning:

- SITA exception doesn’t apply for smartphones/cell phones
 - Minimal risk to officer
 - Vast amounts of personal data

- Caveat: Exigent circumstances

- Texting to detonate bomb
- Child abductor with information about child



Drug Testing in Schools



Vernonia v. Acton (1995)

- Who is being tested?

- Student athletes

- Why?

- Investigation determines H.S. athletes are using drugs
 - Concern that drug use leads to increased sports-related injuries
 - Belief that athletes are role models for other students

- Holdings:

- 4th Amendment applies to schools; compelled urinalysis is a search
 - Schools are “special needs” environments, eliminating the need for both probable cause and individualized suspicion
 - Measures children's expectations of privacy in light of *in loco parentis* relationship with school, nature of “custodial and tutelary” power of school; then looks particularly to school sports, with required “communal undress” and volunteering for additional scrutiny
 - No criminal consequences



Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty. v. Earls

- Who is tested?
 - Any middle or high school student participating in a competitive extra-curricular activity
- Why?
 - Nationwide drug problem
- Holding:
 - Policy is a reasonable means of furthering the School District's important interest in preventing and deterring drug use among its schoolchildren and therefore does not violate the Fourth Amendment

